(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

Single Bench

SECOND APPEAL NO. 567 OF 2005

Appellant **Defendants**	Jeera Bai W/o Antram (Since deceased) through Legal Representatives;
	(a) ~~(j)~~ Smt. Basant patel, Wd/o Kartik Ram
	(b) ~~(k)~~ Smt. Ghana Bai patel, W/o Bhojram
	(c) ~~(l)~~ Nageshwar S/o Antram patel
	(d) ~~(m)~~ Sushila D/o Kedar Patel
	(e) ~~(n)~~ ~~Nageshwar,~~ S/o Antram patel
	(f) ~~(o)~~ Gyaneshwar, S/o Antram patel
	(g) ~~(p)~~ Prayag Narayan, S/o Antram patel
	(h) ~~(q)~~ Urmila Bai, D/o Antram Patel
	(i) ~~(r)~~ Santoshi Bai D/o Antram Patel
	(All R/o Baloda Bazar, civil Lines, Tahsil – Baloda Bazar, Distt. Raipur

P.R. No. 3170/05 Presented by Shri Santosh Bhoy dated 17/12/05

Bageshar 19-12-2005

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Versus

Respondent **Plaintiff**	1. Shyam, S/o Dhel Singh Satnami, aged about 51 years, Cultivator, R/o Baloda Bazar, Tahsil-Baloda Bazar, Distt. Raipur (Chhattisgarh)
Respondent **Defendant No. 2**	2. State of Chhattisgarh Through Collector, Raipur, Distt. Raipur (Chhattisgarh)

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.No. 567/2005 **सन् 200**

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12.07.2006

Ku. Sharmila Singhai, Counsel for the appellants.

Heard on admission.

Order passed as follows:

ORAL ORDER
(12/7/2006)

This is the defendants' Second Appeal filed under Section 100 of the Code of Civil Procedure. It arises out of the judgment and decree dated 3/9/2005 passed by the 1st Additional District Judge, Baloda Bazar, District - Raipur (C.G.).

The brief facts are that the plaintiff filed a Civil Suit for permanent injunction and also for damages on account of interference being made by the defendants on the suit land owned by him. The plaint allegations are that the original owners of the suit land were Smt. Ram Bai, Smt. Bodhni Bai and Smt. Bai, who were the real sisters. The land was jointly acquired by them. After them, the land was jointly succeeded by many successors alongwith the plaintiff and on a partition between them, this portion of suit land was received in share of the plaintiff and he is holding the exclusive possession thereof since long back. The defendants denied the contentions of the plaintiff. It was pleaded by them that the entire area of the suit land was purchased by Smt. Jeera Bai from its joint owners, named above, through a registered sale-

(पीछे देखिये)

XI-HC-22

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deed dated 20/1/1977. The possession was also delivered to her and in this manner, Smt. Jeera Bai, the original defendant No.1, who died during the pendency of the suit and substituted by the Legal Representatives became owner of this property. Therefore, a decree for permanent injunction cannot be passed in favour of the plaintiff.

The Trial Court framed various issues and after recording evidence of the parties, dismissed the suit of the plaintiff holding that a question of title is involved in the suit and unless, a suit regarding declaration about the sale-deed is not filed by the plaintiff, the plaintiff cannot claim permanent injunction. However, a positive finding was recorded by the Trial Court that in fact, the plaintiff is holding the possession of the suit land and the defendants or Smt. Jeera Bai were never put in possession of the suit property.

Against the aforesaid judgment and decree passed by the Trial Court, the plaintiff filed an appeal before the Lower Appellate Court. The Lower Appellate Court allowed the appeal and decreed the suit for permanent injunction. It appears that the Appellate Court has disposed of 5 different appeals, filed by 5 different plaintiffs, by a common judgment and decree dated 3/9/2005 because almost similar facts in issue were decided in 5 different Civil Suits against which these appeals were decided. The Appellate Court decreed the suit on the ground that when the Trial Court came to the conclusion that the plaintiff was in possession of the disputed

देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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land, a decree for permanent injunction should have been passed in favour of the plaintiff, which the Trial Court has not done. It is against this judgment and decree passed by the Lower Appellate Court, the appellants/defendants have filed this Second Appeal.

Learned counsel for the appellants raises only one point. Her contention is that the finding in relation to possession is a perverse finding and the same cannot be sustained in the eye of law. She further submits that if the plaintiff will not be held to be in possession of the suit property, a decree for permanent injunction cannot be passed.

I have gone through the records of the Courts below and have also perused the evidence led by the parties.

It has come in the evidence of witnesses that the entire area of suit land was succeeded in joint possession by the plaintiff and other successors and thereafter, there was a partition in the family, in which, this particular portion of the suit land was received by the plaintiff in the said partition and the plaintiff is holding exclusive possession of the suit property since the said date.

On appreciation, the Trial Court found that Late Smt. Jeera Bai or any of the present appellants were never put in possession of the suit property and the plea raised by them regarding receiving of possession in lieu of the sale has been negatived. A positive finding in relation to possession of the plaintiff over the suit land has been recorded by the Trial

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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Court on the basis of evidence on record. The Appellate Court also confirmed the above finding and has decreed the suit for permanent injunction on this basis only that the plaintiff was in possession of the suit land.

Since the finding of possession is a finding of fact and the same has been concurrently recorded by the two Courts below and further since, there appears to be no perversity in the aforesaid findings recorded by the two Courts below, I am not inclined to admit this appeal for hearing.

A perusal of section 100 C.P.C. makes it clear that the scope and exercise of jurisdiction by the High Court in the second appeal u/s 100 is limited to the substantial question of law framed at the time of admission of the appeal or additional substantial questions of law framed at the later stage after recording reasons for the same. This makes it clear that the existence of substantial question of law is *sine qua non* for the exercise of jurisdiction under the amended provisions of section 100 CPC. (***Please see (2004) Vol. V SCC 762 – Thiagarajan and others –vs- Venugopala Swamy B.Koil and others***).

As to which would constitute a substantial question of law, it has been observed by the Apex Court in case of ***Santosh Hazari –vs- Purushottam Tiwari (deceased) by L.Rs. (2001) 3 SCC 179*** *that* "a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.No.567/2005 **सन्** **200**

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law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

For the foregoing reasons, no substantial question of law is involved in this appeal and the same cannot be entertained under Section 100 of the Code of Civil Procedure.

The appeal has no merit and the same is dismissed.

No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

shyna/vatti

(पीठासीन)